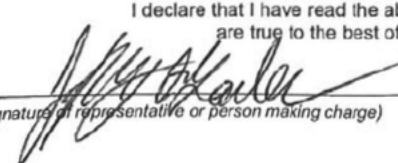


UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

| DO NOT WRITE IN THIS SPACE | |
|----------------------------|------------|
| Case | Date Filed |
| 18-CA-259215 | 4/15/2020 |

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

| 1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT | |
|--|---|
| a. Name of Employer New Flyer of America | b. Tel. No. 320-203-4982 |
| | c. Cell No. 320-428-8023 |
| | f. Fax No. 320-203-4779 |
| d. Address (Street, city, state, and ZIP code) 6200 Glenn Carlson Dr. St. Cloud, MN 56301 | e. Employer Representative Christie Elliott |
| | g. e-mail christie_elliott@newflyer.com |
| | h. Number of workers employed ~650 |
| i. Type of Establishment (factory, mine, wholesaler, etc.) Manufacturing Plant | j. Identify principal product or service Transit Bus manufacturing |
| The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act. | |
| 2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Unilateral changes; Bargaining in bad faith. | |
| 3. Full name of party filing charge (if labor organization, give full name, including local name and number) Communications Workers of America, AFL-CIO | |
| 4a. Address (Street and number, city, state, and ZIP code) 7600 Parklawn Av. Ste. 412 Minneapolis, MN 55435 | 4b. Tel. No. 952-926-9000 |
| | 4c. Cell No. 716-491-2839 |
| | 4d. Fax No. 952-926-9001 |
| | 4e. e-mail jlacher@cwa-union.org |
| 5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Communications Workers of America, AFL-CIO | |
| 6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.  Jeff S. Lacher (signature of representative or person making charge) (Print/type name and title or office, if any) | |
| Tel. No. 716-491-2839 | |
| Office, if any, Cell No. 952-926-9000 | |
| Fax No. 952-926-9001 | |
| e-mail jlacher@cwa-union.org | |
| Address 7600 Parklawn Ave #412, Mpls. MN | Date 4/15/20 |

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 18
Federal Office Building
212 Third Avenue South, Suite 200
Minneapolis, MN 55401-2657

Agency Website: www.nlr.gov
Telephone: (612)348-1757
Fax: (612)348-1785



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April 16, 2020

Christie Elliott
New Flyer of America
6200 Glenn Carlson Dr
Saint Cloud, MN 56301-8852

Re: New Flyer of America
Case 18-CA-259215

Dear Ms. Elliott:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner NICHOLAS S. HEISICK whose telephone number is (952)703-2882. If this Board agent is not available, you may contact Supervisory Attorney ASHOK C. BOKDE whose telephone number is (952)703-2894.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board

agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlr.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jennifer Hadsall", written in a cursive style.

JENNIFER A. HADSALL
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire



UNITED STATES GOVERNMENT
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April 16, 2020

Jeff S. Lacher, Staff Representative
Communications Workers of America, AFL-CIO
7600 Parklawn Ave., Suite 412
Minneapolis, MN 55435

Re: New Flyer of America
Case 18-CA-259215

Dear Mr. Lacher:

The charge that you filed in this case on April 15, 2020 has been docketed as case number 18-CA-259215. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner NICHOLAS S. HEISICK whose telephone number is (952)703-2882. If this Board agent is not available, you may contact Supervisory Attorney ASHOK C. BOKDE whose telephone number is (952)703-2894.

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If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jennifer Hadsall". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Hadsall".

JENNIFER A. HADSALL
Regional Director

Copy of charge only sent to:

Matthew R. Harris, District 4 Counsel
Communications Workers of America,
AFL-CIO, CLC
20525 Center Ridge Road, Room 700
Cleveland, OH 44116



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June 8, 2020

ANABEL CASSADY, ESQ.
DORSEY & WHITNEY LLP
50 S 6TH ST STE 1500
MINNEAPOLIS, MN 55402-1498

JOHN T. (JACK) SULLIVAN, ESQ.
DORSEY & WHITNEY LLP
50 S. SIXTH ST., STE. 1500
MINNEAPOLIS, MN 55402-1498

JEFF S. LACHER, STAFF REPRESENTATIVE
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
7600 PARKLAWN AVE., SUITE 412
MINNEAPOLIS, MN 55435

Re: New Flyer of America
Case 18-CA-259215

Dear Ms. Cassady, Mr. Sullivan and Mr. Lacher:

The Region has reviewed the charge filed against New Flyer of America alleging that it violated the National Labor Relations Act. As explained below, I have determined that further proceedings on the Charge should be deferred in accordance with the Board's policy under *Dubo Manufacturing Company*, 142 NLRB 431 (1963).

Deferral Policy: The Board's *Dubo* deferral policy provides that this Agency withhold making a final determination on certain unfair labor practice charges when a grievance has been filed by the Charging Party under the grievance/arbitration provisions of a relevant collective bargaining agreement, and there is a reasonable chance that use of the grievance/arbitration machinery will resolve or set at rest the dispute underlying the charge. This policy is based in part on encouraging stability in labor relations by deferring to the parties' chosen means of dispute resolution, as well as avoiding duplicative litigation in multiple forums. Therefore, if the grievance continues to be processed through the grievance/arbitration machinery, the Regional Office will defer the charge.

Decision to Defer: Based on the Region's investigation of this matter, I am deferring further proceedings on the charge alleging the Employer bargained in bad faith with the Union and made unilateral changes. I am making this determination based on my belief that there is sufficient commonality between the facts and issues underlying the allegations of the charge

and the facts and issues underlying the allegations of the grievance, and that there is a reasonable chance the parties' resolution of the grievance through the grievance/arbitration machinery will resolve or set at rest the dispute underlying the charge.

No Right of Appeal: Because the Dubo policy is based on the Charging Party's having filed and voluntarily processed a grievance under the parties' contractual dispute resolution process, there is no right to appeal the Region's deferral decision to the Office of the General Counsel.

Further Processing of the Charge: As explained below, while the charge is deferred, the Region will monitor the processing of the grievance and, under certain circumstances, may resume processing the charge.

Charging Party's Conduct During Dubo Deferral: Because Dubo deferral is dependent on the Charging Party's processing of a grievance through the grievance/arbitration procedure, the Region will revoke deferral and resume processing of the charge if the grievance is withdrawn by the Charging Party or a third party in control of the grievance/arbitration process, without an intervening settlement or other resolution of the issues on which deferral was based. However, in the event that a Charging Party elects to withdraw a grievance in lieu of *Dubo* deferral, and the Charged Party objects on the ground that deferral would be appropriate under the Board's separate, nonvoluntary deferral policy promulgated pursuant to *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *United Technologies Corp.*, 268 NLRB 557 (1984), the Region will determine whether deferral under *Collyer* is appropriate and, if so, issue a separate notification to the parties addressing their obligations and rights under that deferral policy.

Charged Party's Conduct During Dubo Deferral: If the Charged Party prevents or impedes hearing and resolution of the grievance, raises a timeliness defense, or otherwise refuses to address the merits of the grievance in the grievance/arbitration process, I will revoke deferral and resume processing of the charge.

Inquiries and Requests for Further Processing: Approximately every 90 days, the Regional Office will ask the parties about the status of this dispute to determine if the dispute has been resolved and whether continued deferral is appropriate. However, I will accept and consider at any time requests and supporting evidence submitted by any party to this matter for dismissal of the charge, for continued deferral of the charge or for issuance of a complaint.

Notice to Arbitrator Form: If the grievance is submitted to an arbitrator, please sign and submit to the arbitrator the enclosed "Notice to Arbitrator" form to ensure that the Region receives a copy of an arbitration award when the award is sent to the parties.

Review of Arbitrator's Award: If the grievance is arbitrated, the Charging Party may request that this office review the arbitrator's award. The request must be in writing and addressed to me. The request should discuss whether the arbitration process was fair and regular, whether the unfair labor practice allegations in the charge were considered by the arbitrator, and whether the award is clearly repugnant to the Act. Further guidance on the nature of this review is provided in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), and *Olin Corp.*, 268 NLRB 573 (1984).

Very truly yours,

/s/ Jennifer A. Hadsall

JENNIFER A. HADSALL
Regional Director

Enclosure

cc: CHRISTIE ELLIOTT
NEW FLYER OF AMERICA
6200 GLENN CARLSON DR
SAINT CLOUD, MN 56301-8852